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AFFEICATION NO.	FIGNO DATE	THE TRAINED INVENTOR	ATTORNET DOCKET NO.	CONTINUATION NO.
10/817,298	04/02/2004	Edward Z. Cai		1836
7590 08/04/2006			EXAMINER	
Edward Cai 4607 SE Autumn Ct.			ALEXANDER, REGINALD	
Camas, WA 98607			ART UNIT	PAPER NUMBER
·			1761	
			DATE MAILED: 08/04/2006	

Please find below and/or attached an Office communication concerning this application or proceeding.

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION. Extensions of time may be available under the provided will apply and will apply and will apply the time the mainting date of this communication. If NO period for reply is specified above, the mainting date of this communication is to provided by the provided by the provided provide for reply in specified above, the mainting date of this communication, even if timely fleet, may reduce any senter planning. Failure for provided by the Diffuse later than three months after the mailing date of this communication, even if timely fleet, may reduce any senter planning. Provided by the provided by the provided and the provided an			<i>7</i>				
## Examiner Art Unit Tri61 ## The MAILING DATE of this communication appears on the cover sheet with the correspondence address → Period for Reply A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS. WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION. ### THE PRIOR OF THE STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS. WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION. ### THE PRIOR OF THE STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS. WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION. ### THE PRIOR OF THE STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS. WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION. ### THE PRIOR OF THE STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS. WHICHEVER IS SET TO EXPIRE 1 MONTH(S) THE STATUTORY PERIOD FOR THIS COMMUNICATION. ### THE PRIOR OF THIS COMMUNICATION. ### THE PRIOR OF THIS COMMUNICATION. ### THE PRIOR OF THE STATUTORY PERIOD FOR THIS COMMUNICATION. ### THE PRIOR OF THIS COMMUNICATION. ### THE PRIOR OF THE STATUTORY PERIOD FOR THIS COMMUNICATION. ### THE PRIOR OF THIS CONTINUE. ### THE PRIOR OF THIS COMMUNICATION. ### THE PRIOR OF THIS CONTI	-	Application No.	Applicant(s)				
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1) Responsive to communication(s) filed on	WHICHEVER IS LONGER, FROM THE MAILING DA - Extensions of time may be available under the provisions of 37 CFR 1.13 after SIX (6) MONTHS from the mailing date of this communication. - If NO period for reply is specified above, the maximum statutory period w - Failure to reply within the set or extended period for reply will, by statute, Any reply received by the Office later than three months after the mailing	ATE OF THIS COMMUNICATION 36(a). In no event, however, may a reply be tirr vill apply and will expire SIX (6) MONTHS from cause the application to become ABANDONE	N. nely filed the mailing date of this communication. D (35 U.S.C. § 133).				
2a) This action is FINAL. 2b) This action is non-final. 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213. Disposition of Claims 4) Claim(s) 1-35 is/are pending in the application. 4a) Of the above claim(s) is/are withdrawn from consideration. 5) Claim(s) is/are allowed. 6) Claim(s) is/are objected to. 8) Claim(s) is/are subjected to. 8) Claim(s) 1-35 are subject to restriction and/or election requirement. Application Papers 9) The specification is objected to by the Examiner. 10) The drawing(s) filed on is/are: a) accepted or b) objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d). 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152. Priority under 35 U.S.C. § 119 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). a) All b) Some * c) None of: 1. Certified copies of the priority documents have been received. 2. Certified copies of the priority documents have been received in Application No. 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)). *See the attached detailed Office action for a list of the certified copies not received.	Status						
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12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). a) All b) Some * c) None of: 1. Certified copies of the priority documents have been received. 2. Certified copies of the priority documents have been received in Application No 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)). * See the attached detailed Office action for a list of the certified copies not received. Attachment(s) 1) Notice of References Cited (PTO-892) 2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) 5) Notice of Informal Patent Application (PTO-152)	11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.						
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Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- Claims 1-10, drawn to a beverage production device, classified in class
 99, subclass 323.1.
- II. Claims 11-13, drawn to a beverage production device including a cream modulator, classified in class 99, subclass 323.1.
- III. Claims 14-23, drawn to a beverage production device including a cup modulator, classified in class 99, subclass 305.
- IV. Claim 24, drawn to a beverage production device, classified in class 99, subclass 295.
- V. Claims 25-35, drawn to a beverage production device including a pressure modulator, classified in class 99, subclass 299.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are directed to related apparatus. The related inventions are distinct if the inventions as claimed do not overlap in scope, i.e., are mutually exclusive; the inventions as claimed are not obvious variants; and the inventions as claimed are either not capable of use together or can have a materially different design, mode of operation, function, or effect. See MPEP § 806.05(j). In the instant case, the cream modulator of invention II is not present in invention I.

Inventions I and III are directed to related apparatus. The related inventions are distinct if the inventions as claimed do not overlap in scope, i.e., are mutually exclusive; the inventions as claimed are not obvious variants; and the inventions as claimed are

either not capable of use together or can have a materially different design, mode of operation, function, or effect. See MPEP § 806.05(j). In the instant case, the cup modulator of invention III is not present in invention I.

Inventions I and IV are directed to related apparatus. The related inventions are distinct if the inventions as claimed do not overlap in scope, i.e., are mutually exclusive; the inventions as claimed are not obvious variants; and the inventions as claimed are either not capable of use together or can have a materially different design, mode of operation, function, or effect. See MPEP § 806.05(j). In the instant case, the plural collection channels and sealing surface of invention IV is not present in invention I.

Inventions I and V are directed to related apparatus. The related inventions are distinct if the inventions as claimed do not overlap in scope, i.e., are mutually exclusive; the inventions as claimed are not obvious variants; and the inventions as claimed are either not capable of use together or can have a materially different design, mode of operation, function, or effect. See MPEP § 806.05(j). In the instant case, the pressure modulator of invention V is not present in invention I.

Inventions II and III are directed to related apparatus. The related inventions are distinct if the inventions as claimed do not overlap in scope, i.e., are mutually exclusive; the inventions as claimed are not obvious variants; and the inventions as claimed are either not capable of use together or can have a materially different design, mode of operation, function, or effect. See MPEP § 806.05(j). In the instant case, the inventions

as claimed are mutually exclusive and have a materially different mode of operation (see crema modulator of invention II and cup modulator of invention III).

Inventions II and IV are directed to related apparatus. The related inventions are distinct if the inventions as claimed do not overlap in scope, i.e., are mutually exclusive; the inventions as claimed are not obvious variants; and the inventions as claimed are either not capable of use together or can have a materially different design, mode of operation, function, or effect. See MPEP § 806.05(j). In the instant case, the inventions as claimed are mutually exclusive and have a materially different design (see cup modulator of one invention and plural collection channels and sealing surface of the other invention).

Inventions II and V are directed to related apparatus. The related inventions are distinct if the inventions as claimed do not overlap in scope, i.e., are mutually exclusive; the inventions as claimed are not obvious variants; and the inventions as claimed are either not capable of use together or can have a materially different design, mode of operation, function, or effect. See MPEP § 806.05(j). In the instant case, the inventions as claimed are mutually exclusive and have a materially different mode of operation (see cream modulator of invention II and pressure modulator of invention V and their use).

Inventions III and IV are directed to related apparatus. The related inventions are distinct if the inventions as claimed do not overlap in scope, i.e., are mutually exclusive; the inventions as claimed are not obvious variants; and the inventions as claimed are either not capable of use together or can have a materially different design, mode of

operation, function, or effect. See MPEP § 806.05(j). In the instant case, the inventions as claimed are mutually exclusive and have materially different design (see cup modulator of invention III and plural collection channels and sealing surface of invention IV).

Inventions III and V are directed to related apparatus. The related inventions are distinct if the inventions as claimed do not overlap in scope, i.e., are mutually exclusive; the inventions as claimed are not obvious variants; and the inventions as claimed are either not capable of use together or can have a materially different design, mode of operation, function, or effect. See MPEP § 806.05(j). In the instant case, the inventions as claimed are mutually exclusive and have a materially different mode of operation (see cup modulator of invention I and pressure modulator of invention V and their use).

Inventions IV and V are directed to related apparatus. The related inventions are distinct if the inventions as claimed do not overlap in scope, i.e., are mutually exclusive; the inventions as claimed are not obvious variants; and the inventions as claimed are either not capable of use together or can have a materially different design, mode of operation, function, or effect. See MPEP § 806.05(j). In the instant case, the inventions as claimed are mutually exclusive and have a materially different design (see plural collection channels and sealing surface of invention IV and pressure modulator of invention V).

Because these inventions are independent or distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

A telephone call was made to Edward Cai on 01 August 2006 to request an oral election to the above restriction requirement, but did not result in an election being made.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Should applicant traverse on the ground that the inventions or species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions or species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C.103(a) of the other invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Reginald L. Alexander whose telephone number is 571-272-1395. The examiner can normally be reached on Monday-Friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

rla 01 August 2006 Reginald L. Alexander Primary Examiner Art Unit 1761 Page 7